



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-3262-PN]

#### **Medicare and Medicaid Programs; Application from American Association for Accreditation of Ambulatory Surgery Facilities for Continued Approval of its Ambulatory Surgery Facilities Accreditation Program**

**AGENCY:** Centers for Medicare and Medicaid Services, HHS.

**ACTION:** Notice.

**SUMMARY:** This proposed notice with comment period acknowledges the receipt of an application from the American Association for Accreditation of Ambulatory Surgery Facilities (AAAASF) for continued recognition as a national accrediting organization for ambulatory surgery centers (ASCs) wish to participate in the Medicare or Medicaid programs.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on **[OFR insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** In commenting, please refer to file code CMS-3262-PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. Electronically. You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the "Submit a comment" instructions.
2. By regular mail. You may mail written comments to the following address ONLY:

Centers for Medicare & Medicaid Services,  
Department of Health and Human Services,  
Attention: CMS-3262-PN,  
P.O. Box 8010,  
Baltimore, MD 21244-8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. By express or overnight mail. You may send written comments to the following address ONLY:

Centers for Medicare & Medicaid Services,  
Department of Health and Human Services,  
Attention: CMS-3262-PN,  
Mail Stop C4-26-05,  
7500 Security Boulevard,  
Baltimore, MD 21244-1850.

4. By hand or courier. If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC--

Centers for Medicare & Medicaid Services,  
Department of Health and Human Services,  
Room 445-G, Hubert H. Humphrey Building,  
200 Independence Avenue, SW.,  
Washington, DC 20201

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—

Centers for Medicare & Medicaid Services,  
Department of Health and Human Services,  
7500 Security Boulevard,  
Baltimore, MD 21244-1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the “SUPPLEMENTARY INFORMATION” section.

**FOR FURTHER INFORMATION CONTACT:**

Georganne Kuberski, (410) 786-0799.

Patricia Chmielewski, (410) 786-6899.

Cindy Melanson, (410) 786-0310.

**SUPPLEMENTARY INFORMATION:**

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential

business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

## **I. Background**

Under the Medicare program, eligible beneficiaries may receive covered services in an ambulatory surgery center (ASC) that meet certain requirements. Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) establishes distinct criteria for facilities seeking designation as an ASC. Regulations concerning provider agreements are at 42 CFR Part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 416 specify the conditions that an ASC must meet in order to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for ASCs.

Generally, in order to enter into an agreement, an ASC must first be certified by a State survey agency as complying with the conditions or requirements set forth in part 416. Thereafter, the ASC is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements. However, ASC's have an alternative to surveys by State agencies for participation in the Medicare program.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization that all applicable Medicare conditions are met or exceeded, we would deem those provider entities as having met the requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to have met the Medicare conditions. A national accrediting organization applying for approval of its accreditation program under part 488, subpart A, must provide us with reasonable assurance that the accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of accrediting organizations are set forth at §488.4 and §488.8(d)(3). The regulations at §488.8(d)(3) require accrediting organizations to reapply for continued approval of its accreditation program every 6 years or as determined by CMS.

American Association for Accreditation of Ambulatory Surgery Facilities (AAAASF's) current term of approval for their ASC accreditation program expires November 27, 2012.

## **II. Approval of Deeming Organizations**

Section 1865(a)(2) of the Act and our regulations at §488.8(a) require that our findings concerning review and approval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's: requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in

compliance with the conditions or requirements; and ability to provide CMS with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of AAAASF's request for continued approval of its ASC accreditation program. This notice also solicits public comment on whether AAAASF's requirements meet or exceed the Medicare conditions for participation for ASCs.

### **III. Evaluation of Deeming Authority Request**

AAAASF submitted all the necessary materials to enable us to make a determination concerning its request for continued approval of its ASC accreditation program. This application was determined to be complete on April 27, 2012. Section 1865(a)(3)(A) of the Act, requires that within 60 days of receipt of an organization's complete application to be a CMS-approved accrediting organization, we publish a notice that identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period. Under section 1865(a)(2) of the Act and our regulations at §488.8 (Federal review of accrediting organizations), our review and evaluation of AAAASF would be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of AAAASF's standards for an ASC as compared with CMS' conditions for coverage.

- AAAASF's survey process to determine the following:
  - + The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.
  - + The comparability of AAAASF's processes to those of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.
- AAAASF's processes and procedures for monitoring an ASC found out of compliance with AAAASF's program requirements. These monitoring procedures are used only when AAAASF identifies noncompliance. If noncompliance is identified through validation reviews or complaint surveys, the State survey agency monitors corrections as specified at §488.7(d).
- AAAASF's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.
- AAAASF's capacity to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.
- The adequacy of AAAASF's staff and other resources, and its financial viability.
- AAAASF's capacity to adequately fund required surveys.
- AAAASF's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.
- AAAASF's agreement to provide CMS with a copy of the most current accreditation survey, together with any other information related to the survey as we may require (including corrective action plans).

#### **IV. Collection of Information Requirements**

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

#### **V. Response to Public Comments**

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the “**DATES**” section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.



CMS-3262-PN

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare--Hospital Insurance Program; and No. 93.774, Medicare--Supplementary Medical Insurance Program)

Dated: June 12, 2012

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**Marilyn Tavenner,**

Acting Administrator,

Centers for Medicare & Medicaid Services.

**BILLING CODE: 4120-01-P**

**[FR Doc. 2012-15293 Filed 06/21/2012 at 8:45 am; Publication Date: 06/22/2012]**